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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 LEOPOLDO CARDENAS, a.k.a.
8 Leonardo Escamilla,

9 Petitioner,

10 v.

11 STEVE LOWE AND KATHERINE
12 STEELE KNOX,

13 Respondents.

NO: 4:18-CV-5018-TOR

ORDER DISMISSING ACTION
WITH PREJUDICE

14 BEFORE THE COURT is Petitioner's "Amended Petition for Writ of Habeas
15 Corpus and Motion to Show Cause," which the Court construes as his Response,
16 ECF No. 10, to the Order to Show Cause issued on April 5, 2018, ECF No. 6.
17 Petitioner, a prisoner at the Washington State Penitentiary, is proceeding *pro se* and
18 *in forma pauperis*; Respondents have not been served.

19 On April 5, 2018, the Court advised Petitioner of the deficiencies of his *pro*
20 *se* habeas petition and directed him to show cause why this action should not be

1 dismissed as time barred under 28 U.S.C. § 2244(d) and as precluded by
2 *Lackawanna Cnty. Dist. Attorney v. Coss*, 532 U.S. 394, 403-04 (2001) (a prisoner
3 may not challenge a prior conviction used to enhance a current sentence unless there
4 was a failure to appoint counsel in violation of *Gideon v. Wainwright*, 372 U.S. 335
5 (1963) in the proceeding that resulted in the prior conviction), ECF No. 6. The Court
6 finds that the Amended Petition does not cure the deficiencies of the initial petition,
7 although it does add Superintendent Don Holbrook as a Respondent.

8 On July 22, 1986, Petitioner pleaded guilty to possession of stolen property in
9 the second degree having been charged with possession of stolen property in the first
10 degree, *See* ECF No. 10 at 16-20. He states that he believed he would be released
11 from incarceration the same day, but he was subsequently charged with additional
12 crimes and proceeded to trial on theft and burglary charges. *See* ECF No. 10 at 29-
13 32. He baldly asserts that the Judgment and Sentences from 1986 are void as they
14 were allegedly obtained by fraud and misrepresentation. He makes no showing that
15 he successfully pursued these arguments in state court.

16 Petitioner argues that, although counsel was appointed to represent him, she
17 actually assisted the prosecutor in obtaining his guilty plea and subsequent
18 convictions. This argument is insufficient to withstand the preclusive effect of
19 *Lackawanna*.

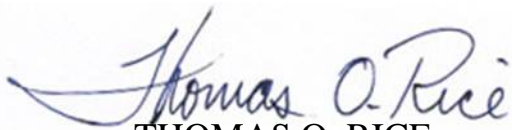
1 In addition, Petitioner has failed to make a credible claim of actual innocence
2 supported by new reliable evidence. *See Schlup v. Delo*, 513 U.S. 298, 324 (1995).
3 He does not support his assertions of innocence with credible declarations of guilt
4 by another, *see Sawyer v. Whitley*, 505 U.S. 333, 340 (1992), trustworthy eyewitness
5 accounts, or exculpatory scientific evidence. *See Schlup*, 513 U.S. at 324. Rather,
6 he repeatedly asserts, “the record will show” This is insufficient to make a
7 convincing showing of factual innocence which would allow this Court to entertain
8 his untimely habeas petition. *See McQuiggin v. Perkins*, 569 U.S. 383, 398 (2013).

9 Having failed to show cause, **IT IS ORDERED** this action is dismissed with
10 prejudice as time barred under 28 U.S.C. § 2244(d) and as precluded by *Lackawanna*
11 *Cnty. Dist. Attorney v. Coss*, 532 U.S. at 403-04.

12 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,
13 enter judgment, provide copies to Petitioner, and close the file. The Court certifies
14 that pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could not be
15 taken in good faith, and there is no basis upon which to issue a certificate of
16 appealability. 28 U.S.C. § 2253(c); Fed. R.App. P. 22(b).

17 **DATED** May 31, 2018.




THOMAS O. RICE
Chief United States District Judge